



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-76841

August 23, 1948.

President, Board of Commissioners,

District of Columbia.

My dear Mr. Young:

Consideration has been given your letter of May 27, 1948, as follows:

"The Health Department of the District of Columbia submitted an application to the Public Health Service, pursuant to Section 625 of the Hospital Survey and Construction Act, approved August 13, 1946 (60 Stat. 1040, 1045), for Federal participation in the remodeling of the Gales School located at First and G Streets, N. W., into a Health Center, which was approved by the Public Health Service on April 1, 1948. This application was made in the name of the District of Columbia Health Department as 'Applicant' and was approved and recommended by the District of Columbia Health Department as the 'State Agency'. Under Regulations of the Surgeon General (Section 53.78 of Title 42, Chapter 1, Federal Register of October 22, 1947), payment of the Federal share in the cost of construction is made in three or more installments upon certification by the State Agency that the agreed percentages of work have been satisfactorily completed. Although Section 625 of the Act contemplates the obligation of definite appropriations at the time project applications are approved, Congress has not appropriated the amounts authorized to be appropriated but has provided that the Federal share of the cost of approved projects shall constitute contractual obligations of the Federal Government, Labor-Federal Security Appropriations Act, 1948 (Public Law 165-80th Congress), and has actually appropriated only 'for liquidation of contractual obligations' (Urgent Deficiencies Appropriation Act, 1948, Public Law 430-80th Congress).

"The Corporation Counsel has advised the Commissioners that Section 625 of the Hospital Survey and Construction Act requires that project applications for construction work to be performed by the District of Columbia should be filed in the name of the Government of the District of Columbia and executed by authority

of the Board of Commissioners, even though requiring recommendation and approval by the Health Department as the State Agency. An amended application is, therefore, being filed in the name of the District of Columbia.

"1. In view of the fact that the Federal share of the cost of construction work to be undertaken by the District Government will be made available only upon completion of specified percentages of the work itself, and since only 2/3 of the estimated cost of construction is to be obligated against District funds, the Corporation Counsel has recommended that the Commissioners obtain your opinion as to whether the Hospital Survey and Construction Act, when read in conjunction with the Labor-Federal Security Appropriations Act, 1948, and the Urgent Deficiencies Appropriation Act, 1948, permits the Commissioners to enter into construction contracts which are to be financed in part under the said Hospital Survey and Construction Act without violating the Antideficiency Act. In this connection, your attention is called to the following proviso in the District of Columbia Appropriation Act, 1948 (Public Law 237-80th Congress) under the heading 'PUBLIC WORKS' and the item 'Capital Outlay, Street and Bridge Divisions':

"\* \* \* Provided further, that in connection with projects to be undertaken as Federal-Aid projects under the provision of the Federal Aid Highway Act of December 20, 1944, the Commissioners are authorized to enter into contract or contracts for these projects in such amounts as shall be approved by the Public Roads Administration, Federal Works Agency; \* \* \*

"2. The Regulations of the Surgeon General (Section 53.79 of Title 42, Chapter 1, Federal Register of October 22, 1947) further require that the Federal funds allotted for construction projects shall, when paid to the District of Columbia, be kept in a separate fund account. In view of the fact that the Project Construction Application concludes with a 'Memorandum of Agreement' signed by the Applicant, by the State Agency and by the Surgeon General, the Commissioners desire to know whether a trust fund account may be established in the Treasury and funds received from the Public Health Service deposited therein, in the absence of the filing of a copy of the executed and approved Project Construction Application with General Accounting Office.

"For your information, there is enclosed a copy of the Project Application heretofore submitted by the District of Columbia Health Department in connection with the Gales School construction. It is requested that this copy be returned with your decision on the foregoing questions."

The questions presented by your letter would appear to be premised upon the proposition that there is an appropriation under the control of the District of Columbia which is available for the cost of the work involved. No reference to the funds proposed to be used appears in your letter, and I find no specific appropriation which would enable the District of Columbia to meet its share of the cost of construction or any language authorizing the contract. However, the legislative proceedings attendant upon the enactment of the District of Columbia Appropriation Act, 1948, Public Law 237, approved July 25, 1947, indicates the proposed use for this purpose of the appropriation under the Health Department for "Operating expenses, Health Department (excluding hospitals)" for the fiscal year 1948. It is stated with respect to this appropriation in House Report No. 806, dated July 8, 1947, page 13, that:

"Subsequent to the completion of the hearings, the Board of Commissioners met and approved the submission of an estimate of \$78,000 for remodeling the old Sales School and to convert the premises into a clinic for use by the Health Department. This action was made necessary by the fact that the landlord of the premises presently being occupied for such a purpose has served notice that the existing lease would no longer be renewed and that he desired the premises as soon as possible but definitely within a period of 3 or 4 months"

And, in Senate Report No. 586, dated July 18, 1947, page 3, the following statement appears in respect to the said appropriation:

"\* \* \* Request was made of the committee to appropriate \$78,000 for remodeling the old Sales School and to convert the premises into a clinic for use by the Health Department. The committee has not approved an additional appropriation for this purpose. If the work is undertaken, the committee expects that the cost thereof will be absorbed within the total appropriation of \$2,000,000."

The said appropriation for "Operating expenses, Health Department (excluding hospitals)" provides as follows:

"Operating expenses, Health Department (excluding hospitals): For expenses necessary for the general administration, medical services, laboratories, and inspection services of the Health Department, including the enforcement of the Acts relating to the prevention of the spread of contagious and infectious diseases in the District of Columbia; the maintenance of tuberculosis and venereal-disease clinics and dispensaries; the conduct of hygiene and sanitation work in schools; the maintenance of a dental-health service; the maintenance of a maternal and child-health service; housekeeping assistance in cases of authentic indigent sick at salary rates to be fixed by the Commissioners; the maintenance of a service for the care of handicapped and crippled children; the conducting of a mass X-ray tuberculosis survey; the establishment of a cancer control project; the maintenance of a public health engineering service; the maintenance of a nursing service; the maintenance of a psychiatric service; the maintenance of an emergency ambulance service; the operation and maintenance of laboratories; out-patient relief of the poor, including medical and surgical supplies, artificial limbs, and pay of physicians at rates to be fixed by the Commissioners, and the enforcement of the Acts relating to the drainage of lots and abatement of nuisances in the District of Columbia, the Act relating to the adulteration of foods, drugs, and candy, the Act relating to the manufacture and sale of mattresses, the Act relating to the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and the Act relating to the sale of milk, cream, and ice cream; such expenses to include one physician at \$5,905 per annum to be appointed without regard to civil-service laws; contract investigational service; uniforms; rent; purchase of passenger motor vehicles; manufacture of serum in indigent cases; and allowances for privately owned automobiles used for the performance of official duties (not to exceed \$264 per annum for each automobile for employees other than dairy-farm inspectors and not to exceed \$312 per annum for each automobile for dairy-farm inspectors); \$2,042,000: Provided, That the Commissioners may, without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the establishment and maintenance of the medical services herein provided for: Provided further, That not to exceed \$200 may be expended for special services in detecting adulteration of drugs and foods, including candy and milk."

Consideration of the question as to the availability of the appropriation referred to for the District's share of the work

necessarily involves the provisions of section 3733, Revised Statutes, 41 U.S.C. 12, as follows:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

By reason of the plain and unambiguous terms of the foregoing provision of law, the decisions of the accounting officers of the Government have established the rule that appropriated funds are not available for the erection of any public building or public improvement unless specific authority therefor is provided in the appropriation to be charged. B-73841, April 15, 1943; 20 Comp. Dec. 73; 2 Comp. Gen. 301; 8 id. 335; 9 id. 75, 10 id. 142; A-59252, December 28, 1934; and A-89128, October 4, 1937.

Your letter and the enclosures therewith do not indicate, in detail, the precise extent of the work to be done in remodeling the Gales School. However, it appears from the project application enclosed with your letter that the estimated cost of the work at that time was \$31,060; but it is understood that by reason of certain circumstances which have arisen recently such costs have increased. Under the circumstances, it would seem that such work necessarily involves such structural changes and improvements in the building as to constitute a "public improvement" within the meaning of section 3733, Revised Statutes, supra.

As heretofore indicated, the appropriation involved does not specifically provide for such public improvement. While there is

provision therein for the "maintenance" of tuberculosis and venereal-disease clinics and dispensaries, and the "maintenance" of various other types of services, such authority does not extend, of course, to substantial alterations or improvements of public buildings such as here involved. See B-73841, April 15, 1943, and 19 Comp. Gen. 778. Moreover, insofar as the above-quoted statements appearing in committee reports may be regarded as indicating a purpose to authorize the contemplated expenditure, it is well established that the inclusion of an item in departmental budget estimates submitted to the Congress to cover an expenditure which otherwise is expressly prohibited by law, and the appropriation of funds without specific reference to the item, do not constitute authority for the proposed expenditure or make the appropriation available for that purpose. 26 Comp. Gen. 545.

Accordingly, and since the cited appropriation does not specifically provide for the construction costs involved in the remodeling of the Gales School, I am constrained to hold that the proposed use of the funds in question would be in contravention of section 3723, Revised Statutes and, for that reason, is unauthorized. It is, therefore, unnecessary to consider the specific questions presented in your letter of May 27, 1948.

The enclosures to your letter are returned herewith.

Respectfully,

(Signed) Lindsay C.

Comptroller General  
of the United States

Enclosure.